

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

IN THE MATTER OF

TARIFF FILING REQUIREMENTS FOR
NONDOMINANT CARRIERS

TO: THE COMMISSION

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)
) CC DOCKET NO. 93-36
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COMMENTS OF PACTEL CORPORATION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PacTel Corporation ("PacTel") by its attorneys, hereby files these comments in response to the Notice of Proposed Rulemaking ("Notice") issued by the Commission on February 19, 1993.^{1/}

PacTel Corporation, a subsidiary of Pacific Telesis Group, oversees the diversified PacTel Companies: Pacific Telesis International, PacTel Cellular, PacTel Paging, and PacTel Teletrac.^{2/} As a major provider of wireless services in dozens of markets across the United States, PacTel has a strong interest in having equitable regulatory policies which encourage rapid and efficient deployment of technology, products, and services.

^{1/} In the Matter of Tariff Filing Requirements for Nondominant Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 93-36, issued February 19, 1993.

^{2/} In conjunction with certain other carriers, PacTel Paging is filing separate comments in this proceeding that address more

The Commission released its Notice in the wake of the D.C. Circuit's November 1992 AT&T v. FCC decision, which held unlawful the FCC's "permissive forbearance" policy that had allowed nondominant carriers to refrain from filing tariffs.^{3/} The permissive forbearance policy, which has been the cornerstone of the FCC's competitive carrier policy since 1982,^{4/} has provided major benefits for the American public by fostering competitive market conditions with minimal regulation. Because of the substantial benefits of this policy, PacTel encourages the Commission to file a request for certiorari with the United States Supreme Court to review the D.C. Circuit's AT&T v. FCC decision or, at minimum, support such a request if made by others. PacTel believes that several important and relevant issues were not before the D.C. Circuit when it decided the AT&T

of the Operator Services Act clearly demonstrate that Congress was aware of the Commission's permissive forbearance doctrine when it passed that statute and that it affirmatively approved of the doctrine.^{6/}

In its Notice, the Commission tentatively concludes that, assuming that nondominant common carriers must file tariffs for their interstate services, the public interest would be served by "streamlining, to the maximum extent possible consistent with our statutory obligations, our tariff regulation of all domestic nondominant carriers."^{7/} The streamlining proposals include shortening the tariff filing notice period from fourteen days to one day, allowing nondominant carriers to state in their tariffs "either a maximum rate or a range of rates," and giving carriers greater flexibility to choose the form and content of their tariffs.^{8/} The Commission also asks "whether any categories of nondominant carriers, such as nondominant

^{6/} For example, Section 226(h)(1) of the Communications Act requires all operator service providers ("OSPs") to file "an informational tariff specifying rates, terms, and conditions... with respect to calls for which operator services are provided." Id. § 226(h)(1)(A). This statutory scheme reflects Congress' view that prior to passage of the Operator Services Act no tariffs were required to be filed by the common carrier OSPs, and demonstrates that Congress drafted the Operator Services Act to coexist with, not alter, the permissive forbearance doctrine. In addition, both the Senate and House Reports discussed in some detail the FCC's long-standing forbearance policy and indicated that the Operator Services Act was not intended to affect the tariff filing requirements of other carriers. See S. Rep. No. 439, 101st Cong., 2d Sess. at 3 n.10, 9, 14 (1990); H.R. Rep. No. 213, 101st Cong., 1st Sess. at 3, 6, 14 (1989).

^{7/} Notice at para. 13.

^{8/} Id.

wireless carriers, can and should be regulated differently than nondominant carriers generally."^{9/}

Although the Commission is not proposing to apply its proposed rule changes to cellular carriers because cellular carriers have not yet been found to be nondominant,^{10/} the Commission should make clear in this proceeding that its new "maximum" streamlined rules will apply to those cellular services

differently than nondominant carriers generally."^{13/} As a major provider of a variety of types of wireless services in many different parts of the United States, PacTel strongly supports the Commission's proposal to streamline to the maximum extent possible its tariffing and related rules for nondominant wireless carriers. As explained below, because nondominant wireless carriers face increasingly rigorous competition from "private carriers" and others that are not subject to Title II of the Communications Act, it is critically important that, regardless of whether or not the Commission decides to adopt its proposal to "streamlin[e] to the maximum extent possible" its tariff filing rules for other nondominant carriers, it should take such action regarding nondominant wireless carriers.

II. DISCUSSION

For many years, the Commission has recognized that virtually all wireless services, including cellular and traditional paging, are local exchange services and therefore outside the Commission's jurisdiction -- including FCC rate regulation -- pursuant to Sections 2(b) and 221(b) of the Communication's Act of 1934.^{14/} This fact, of course, has not

^{13/} Notice at para. 13.

^{14/} See, e.g., Mobile Tariffs, 1 FCC 2d 830 (1965); Tariffs for Mobile Service, 53 FCC 2d 579 (Com. Car. Bur. 1975); and MTS/WATS Market Structure, 97 FCC 2d 834, 882 (1984) ("we have consistently treated the mobile radio services provided by RCCs [radio common carriers] and telephone companies as local in nature.") The Commission has traditionally and properly treated
(continued...)

been changed by the Court's decision in AT&T v. FCC, and therefore local exchange services provided by wireless common carriers are outside the scope of this proceeding.^{15/}

However, in this proceeding it is critically important for the Commission to recognize that, in providing interstate services, many wireless common carriers face substantial and direct competition from private carriers that are not encumbered at all by the tariffing obligations of Section 203.^{16/} As the Commission has recently recognized, "[r]ecent trends in the SMR service reflect that private carrier land mobile providers have begun to emerge as innovative and viable competitors to common carrier land mobile offerings."^{17/} Similarly, Cheryl Tritt, Chief of the Common Carrier Bureau, testified before Congress last year that "[c]ompetition between common and private carriers should be encouraged because it benefits consumers by giving them

^{14/} (...continued)
as "intrastate" even those wireless services that incidentally cross state boundaries as long as the "base station's reliable service area does not extend beyond the borders of the state in which it is located." Tariffs for Mobile Service, 53 FCC 2d 579, 579. A wireless service provider "whose reliable service area does extend beyond state borders" also is not required to file tariffs with the FCC as long as the service "is subject to regulation by state or local authority." Id., See also Section 221(b) of the Communications Act of 1934, as amended.

^{15/} Cf. California v. FCC, 798 F.2d 1515 (D.C. Cir. 1986).

^{16/} Private radio carriers are, by definition and Section 332 of the Communications Act, exempt from Title II regulation by the FCC.

^{17/} In the Matter of Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, Order, 7 FCC Rcd 4398, 4399 (1992).

a wider range of services at prices driven by competitive forces."^{18/}

It is widely recognized that the distinction between common carrier and private radio services has greatly blurred during the past decade. For example, in her Congressional testimony last year Common Carrier Chief Tritt explained that "the demarcation between common and private carriage is becoming less clear as carriers of both kinds compete increasingly to serve the same customers."^{19/} Recent FCC decisions have furthered this blurring between common carrier and private radio services. In 1991, for example, the Commission authorized Fleet

substantially lessened the distinction between private land mobile and common carrier services.^{21/}

Because of the increasingly substantial competition between common and private carriers, arising largely as a result of the FCC's decisions encouraging such competition, there is a corresponding need for equal treatment between these service providers. The need for such equal treatment was recognized by Commissioner Duggan in a recent speech regarding common and private carrier wireless services when he said that he is "concerned about regulatory asymmetry -- treating similar services differently -- for such asymmetry smacks of unfairness."^{22/} The need for regulatory symmetry between common carrier and private radio service providers is a major issue that must be recognized by the FCC in this proceeding.

Given the direct and increasingly vigorous competition that wireless common carriers are experiencing with regard to private carriers, common carrier providers of wireless services must be able to compete equally with private carriers on as level a regulatory playing field as possible. Because private carriers are not encumbered by the numerous Title II obligations imposed

^{21/} In the Matter of Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, Report and Order, 7 FCC Rcd 5558 (1992).

^{22/} "Infrastructure: What Is It That We Want?," Remarks of Commissioner Ervin S. Duggan, Federal Communications Commission, to the Cellular Telecommunications Industry Association, March 3, 1993, at 6. Because of the importance of treating competitors equally, Commissioner Duggan has suggested that all wireless technologies be brought under the auspices of a single "mobile services bureau." Id.

on interstate common carriers, it is imperative that the Commission give wireless common carriers the maximum regulatory flexibility that is proposed for nondominant carriers in the Notice. The streamlining proposals that should be adopted for wireless common carriers that will allow them to compete more equally with private carriers include adopting the one-day tariff notice period,^{23/} allowing nondominant carriers to state in their tariffs either a maximum rate or a range of rates,^{24/} and giving carriers greater flexibility to choose the form and content of their tariffs.^{25/}

These relaxed rules should be applied to common carriers in the increasingly competitive wireless market regardless of the Commission's decision regarding the appropriate tariffing treatment of other types of nondominant common carriers. This is because while most nondominant carriers typically compete with dominant carriers that are more heavily regulated by the FCC, wireless common carriers often compete head-to-head with non-Title II regulated companies providing similar interstate services in similar markets. Thus, the wireless services industry presents a unique and compelling case for the FCC to act in a way that will put all providers of wireless services on a comparable competitive footing. Maximum streamlining of the tariff filing requirements of wireless common

^{23/} Notice at para. 15.

^{24/} Id. at para. 22.

^{25/} Id. at paras. 21-27.

carriers would be a major step toward limiting the regulatory burden on those carriers and would move the wireless industry closer to "regulatory symmetry." By taking this action, the Commission will minimize the artificial barriers that will otherwise limit active price competition among wireless common carriers and private carriers alike -- thereby bringing lower rates and greater service innovations to consumers throughout the country. Because such action is certainly in the public interest, the Commission should streamline "to the maximum extent possible" the tariff filing rules for wireless common carriers.

III. CONCLUSION


For the foregoing reasons, PacTel Corporation urges the Commission to take action consistent with the views contained in these comments.

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CERTIFICATE OF SERVICE

I, Missy Hames, do hereby certify that true and correct copies of the foregoing document, "Comments of PacTel Corporation," filed In the Matter of Tariff Filing Requirements for Nondominant Carriers, were served by hand this 29th day of March 1993, on the following:

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